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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
The Federal-State Joint Board on)
Universal Service)
)
Review of Definition of)
Universal Service)

CC Docket No. 96-45

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

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Table of Contents

Table of Contents.....	Page ii
Summary	Page iii
I. INTRODUCTION.....	Page 1
II. ENHANCED 911 AND CALEA ARE FUNDED UNIVERSAL SERVICES.....	Page 3
A. Implementation of E911 and CALEA Capabilities Furthers Universal Service Goals	Page 4
B. Enhanced 911 and CALEA Capabilities Meet the Statutory Criteria for Universal Services.....	Page 5
C. Essential to Public Safety.....	Page 5
1. Enhanced 911.....	Page 6
2. CALEA.....	Page 8
D. Public Interest Convenience and Necessity.....	Page 9
III. CONCLUSION.....	Page 11

Summary

Congress anticipated an evolving telecommunications landscape, and for that reason, it directed the Federal-State Joint Board and the Federal Communications Commission to review, periodically, the list of services that are eligible for federal universal service support, and to modify that list in order to promote universal service goals and public health and safety. The environment has indeed changed. All telecommunications carriers are required to implement Enhanced 911 services, and telecommunications services in support of the Communications Assistance to Law Enforcement Act, regardless of their cost or the size or financial resources of the carrier. The events of September 11th has heightened the public's awareness of and the need for need for these telecommunications services.

For small, rural wireless carriers with a limited subscriber base, implementing these costly, unfunded mandates is especially burdensome. In order to meet the E-911 and CALEA requirements, smaller wireless carriers must divert resources to E-911 and CALEA implementation that would otherwise be applied to expand and improve service and thereby make available to their rural subscribers competitive services that are accessible to urban and suburban subscribers.

To remedy this situation, and to ensure that subscribers have access to affordable telecommunications services, regardless of where they reside, in keeping with the universal service goals enumerated in Section 254 of the Telecommunications Act of 1996, and consistent with the Joint Board and FCC's broad authority under Section 254(b), RCA proposes that the concept of universal service include an additional category of eligible telecommunications carrier ("ETC"), specifically, a rural, wireless ETC.

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COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ by counsel, hereby submits these Comments in response to the Federal-State Joint Board's review of the definition of "universal service."² The Joint Board's review was undertaken at the direction of the Federal Communications Commission ("FCC" or "Commission"), and pursuant to the Telecommunications Act of 1996 ("the 1996 Act").

I. INTRODUCTION

In its Notice soliciting comments, the Joint Board enumerated the principals guiding its review of universal services: (1) quality services should be available at just, reasonable and affordable rates; (2) access to advanced telecommunications and information services should be

¹RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide Commercial Mobile Radio Service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

²*In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice, 66 Fed. Reg. 46461 (Sept. 5, 2001).

provided in all regions of the nation; and (3) consumers in all regions of the nation should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.³ Based on these principles, the statutory criteria for determining the components of “universal services,” and the public benefits derived from the ubiquitous availability of competitive wireless services in rural areas, RCA believes it to be both timely and appropriate to broaden the concept of universal service to include an additional category of eligible telecommunications carrier (“ETC”), specifically, a rural wireless ETC.⁴ The designation and funding of this additional category would ensure that the Commission’s heretofore unfunded mandates, intended to bring the benefits of advanced telecommunications services to all Americans, will be realized in a competitively neutral manner.

In designating a complement to the current ETC funding mechanism, the Commission will confirm its commitment to the principles of universal service in a manner that achieves important public policy goals in high cost areas in a technology-neutral manner. RCA therefore proposes that rural wireless carriers providing services and capabilities deemed by the Commission or Congress to be required as a matter of public policy to promote public health and safety, such as requested Enhanced 911 (E911) services and technical capabilities in support of

³Id.

⁴Wireless carriers meeting the requirements of 47 C.F.R. § 54.101(a) would also continue to be eligible for traditional universal service support.

the Communications Assistance for Law Enforcement Act (“CALEA”),⁵ should be designated by the Commission as Rural Wireless ETCs,⁶ eligible for appropriate levels of funding.

Congress intended that the Joint Board’s review of existing universal support mechanisms “preserve and advance” the “fundamental” policy goal of universal service.⁷ In view of this goal and in recognition of the evolving nature of telecommunications, Congress granted the Joint Board and the FCC broad authority to “thoroughly review” universal service support mechanisms. This broad grant of authority affords the Joint Board the flexibility it needs to further the universal service principles of Section 254(b). Designating Rural Wireless ETCs as eligible for adequate universal service funding for essential services is consistent with the goals of universal service, and is within the scope of the Joint Board’s authority.

II. ENHANCED 911 AND CALEA CAPABILITIES ARE UNFUNDED **“UNIVERSAL SERVICES”**

The 1996 Act recognized that the definition of “universal service” is not static, but rather, is “an evolving level of telecommunications services” to be established periodically by the FCC based on the recommendations of the Joint Board.⁸

E911 services and technical capabilities in support of CALEA are two categories of services that Congress and the FCC have concluded are essential to public health and safety.⁹

⁵Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. Sec. 2522, and 47 U.S.C. Secs. 229, 1001-1010).

⁶RCA proposes that a “small rural wireless carrier” is any wireless company, together with all affiliates, whose wireless subscribers are fewer than one percent of the Nation’s subscribers in the aggregate nationwide. RCA further proposes that an “affiliate” is any entity controlling, controlled by, or under common control with the wireless company.

⁷Telecommunications Act of 1996, Pub. L. 104-104, “Joint Explanatory Statement of the Committee of the Conference,” Cong. Rec.H1107, H1111 (Jan. 31, 1996).

⁸Section 254(c)(1) of The Telecommunications Act of 1996.

The implementation of these unfunded mandates by rural wireless carriers has, as recognized by the Commission, been hampered because of their extraordinary costs, costs which, when absorbed or spread over a limited subscriber base, drastically affect the competitive position of small and rural wireless carriers.

A. Implementation of E911 and CALEA Capabilities Furthers Universal Service Goals

The federal government has mandated that E911 and CALEA capabilities be deployed by all telecommunications carriers without regard to their cost or the ability of carriers to recover those costs. Because these services are deemed essential to the public welfare and further the goal of universal service by providing access to vital telecommunications services nationwide, critical public policy goals would be achieved by facilitating their availability on a universal basis.

Telecommunications carriers must deploy E911 and CALEA regardless of their size, the population density of their service area or the geographic conditions of the service area. For small and rural carriers that rely on a limited subscriber base from whom to recover the enormous costs involved in deployment of E911 and CALEA capabilities, support for these essential services from the Universal Service Fund is particularly critical to ensure the availability of reasonably prices, comparable services on a competitive basis.

⁹The Commission has already concluded that access to 911 and E-911 services, should be included in the list of universal services eligible for federal universal service support under the existing mechanisms by which a carrier qualifies for USF support. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 7 CR 109, 123, 135 (1977) (citations omitted).

**B. Enhanced 911 and CALEA Capabilities Meet the
Statutory Criteria for Universal Services**

Congress directed the Joint Board and the FCC to review periodically the definition of universal services. It specifically directed these regulatory bodies to:

consider the extent to which such telecommunications services - (A) are essential to the public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience and necessity.¹⁰

Based on their contribution to public safety and health, and because of their public interest benefit, E911 and CALEA capabilities clearly constitute “universal services” eligible for support in high-cost areas.¹¹

C. “Essential” to Public Safety

There is an extensive record as to the public safety benefits of E911 and CALEA services. CALEA capabilities enable law enforcement to track and monitor electronic communications. The efforts of the law enforcement community that were triggered by the events of September 11th further demonstrate the essential nature of telecommunications capabilities that support CALEA.¹² Enhanced 911 capabilities are intended to pinpoint with the

¹⁰47 U.S.C. Sec. 254(c)(1).

¹¹The Commission clarified that it is not necessary for all four criteria to be met in order for a service to be added to the list of universal services. “[A]ll four criteria enumerated in Section 254(c)(1) must be considered, but not each necessarily met, before a service may be included within the general definition of universal Service, should it be in the public interest.” *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 7 CR 109, 132 (1977).

¹²Congress passed, and the President signed into law on October 26, 2001, H.R. 3162, “The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (“The USA Patriot Act”), which expands the ability of federal law enforcement to obtain telephone and Internet communications and which allows

greatest possible accuracy that technology will allow, the location of individuals in need of emergency services. The events of September 11, 2001 and thereafter underscored the importance of E911 services to public safety.¹³ Congressional hearings held before and after September 11th left no doubt that Congress and the FCC view wireless E911 services as critical to public health and safety.¹⁴ For rural wireless carriers, who face what may be insurmountable obstacles in upgrading telecommunications facilities in order to provide E911 as well as CALEA capabilities, universal service support should be available.

1. Enhanced 911

The Commission has ordered all wireless carriers to implement E911.¹⁵ In recognition of the financial burden which would result, the FCC had initially required that a cost recovery mechanism be in place before a wireless carrier is required to implement E911; it later reversed

carriers to cooperate in such efforts as well as to disclose customer E911 information to public safety officials.

¹³“There is no doubt that the our collective sensitivity to the public safety and individual safety were greatly heightened by the events of September 11, 2001. Indeed, terrorist attacks only served to drive home the importance of wireless communications to our national communications infrastructure and our everyday lives.” Separate Statement of Commissioner Kathleen Abernathy, *In re: Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless, LLC, Sprint Spectrum L.P. d/b/a Spring PCS, Verizon Wireless, AT&T Wireless Services, Inc. , Nextel Communications, Inc.*, adopted Oct. 2, 2001.

¹⁴Hearing on Wireless E-911, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, United States Senate, October 16, 2001; Hearing on Wireless E-911, Subcommittee on Telecommunications Trade, and Consumer Protection, Committee on Commerce, United States House of Representatives, June 14, 2001.

¹⁵“As part of our efforts to promote public safety, this Commission in 1996 adopted the *E911 First Report and Order*, establishing rules requiring wireless carriers to implement 911 and Enhanced 911 (E911) services.” *In the Matter of Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Doc No. 94-102, RM-8143, Second Report and Order, 14 FCC Rcd.10954 (1999) citing earlier decisions in this proceeding.

itself, and eliminated the requirement,¹⁶ leaving carriers to recover the costs directly from their subscribers, or absorb the costs themselves. Either alternative negatively affects subscribers and impedes the ability of small and rural carriers to meet universal service goals.

Recognizing that cost is an obstacle to small, rural carriers implementing Phase II E911 services, the FCC recently afforded smaller and rural wireless carriers additional time to “submit requests for relief [of the deployment schedule for Phase II, E911] in recognition of the challenges faced by many smaller and rural carriers.”¹⁷ Regardless of the financial burdens of Phase II E911, however, the FCC has assured Congress that deployment will not be delayed.¹⁸ Full deployment is still expected by 2005, without regard to a carrier’s ability to recover the cost of implementing and deploying the service.¹⁹

This unfunded mandate poses a conundrum for small and rural carriers. Recovery of costs over a smaller subscriber base will render their rates non-competitive. If, on the other hand, these carriers absorb the increased costs without passing along increases to their customers, this decision would severely and negatively affect their ability to provide the types of

¹⁶*In the Matter of Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket no. 94-102, RM-8143, FCC 99-352, Second Memorandum Opinion and Order, 14 FCC Rcd. 20850 (1999).

¹⁷“FCC Acts on Wireless Carrier and Public Safety Requests Regarding Enhanced Wireless 911 Services,” FCC News Release, Oct. 5, 2001. *See also*, “Commission Established Schedule for E911, Phase II Requests by Small and Mid-Sized Carriers,” CC Docket No. 94-102, FCC 01-302, Public Notice, rel. Oct. 12, 2001.

¹⁸“[T]he FCC will continue its efforts to assure that the E911 rollout process continues as rapidly as possible, so that by “9-1-1Day” in the year 2005, we will be able to report that full deployment, as required by the phase II rules, has been achieved on a scale envisioned by the Commission and by the Congress.” Testimony of FCC Wireless Bureau Chief Thomas Sugrue before the Subcommittee on Communications, Committee on Commerce, Science and Transportation, United States Senate, October 16, 2001.

¹⁹*See*, “FCC Acts on Wireless Carrier and Public Safety Requests Regarding Enhanced Wireless 911 Services,” News Release, Oct.5, 2001.

services available from competitors and on a par with urban subscribers. Small, rural carriers would be required to divert finite resources away from improving and expanding basic service and providing those advanced services that are available from competitors and in urban areas, in order to provide E911. Federal universal service support for E911 would therefore promote the universal service objective of providing access to affordable telecommunications and information services equitably, in all regions of the country, in a competitively-neutral manner.

2. CALEA

As with E911, CALEA applies to all telecommunications carriers, including wireless carriers.²⁰ Also like E-911, there is an ample record attesting to fact that telecommunications services that support CALEA capabilities are essential to public safety. Yet, compliance with CALEA presents an enormous challenge for small, rural carriers.

[S]mall and rural carriers generally incur greater per-subscriber costs when deploying facilities or upgrades because of their smaller customer base. Accordingly, expenditures for infrastructure changes . . . will have a greater impact on RCA ratepayers than those of larger companies. . . . [T]his already inflated per-subscriber cost increase . . . broadens the gap between the small/rural and large/urban subscribers.²¹

Without universal service support for deployment of CALEA capabilities, rural carriers and their customers will be subject to undue financial burdens, and universal service goals will be more difficult to attain.

²⁰*In the Matter of Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, Report and Order, 14 FCC Rcd 4151, 4153 (1999); *See also*, Section 102(8) of CALEA, 18 U.S.C. Sec. 2510.

²¹*In the Matter of Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, Comments of the Rural Cellular Association, November 16, 2000. *See also* Comments of RCA filed May 8, 1998, June 12, 1998, and December 14, 1998.

D. Public Interest, Convenience and Necessity

Congress and federal regulators required telecommunications carriers to implement and deploy E911 and CALEA services specifically because their deployment was in the public interest. The FCC's public interest findings are explicit: "[W]e have found E911 service to be in the public interest;"²² "E911 saves lives and property by helping emergency services personnel do their jobs more quickly and efficiently."²³

There public interest finding with respect to CALEA is implicit: "CALEA...was intended to preserve the ability of law enforcement officials to conduct electronic surveillance effectively and efficiently in the face of rapid advances in telecommunications technology."²⁴

Clearly, E911 and CALEA capabilities are services that promote public health and safety and are in the public interest. On that basis, they should be designated as universal services for which rural wireless carriers are eligible for universal service support. It is abundantly clear, especially in light of the events of September 11th, that the public considers wireless E911 access an essential telecommunications service, and the public service community views E911 as essential to perform its job of protecting the public.

Similarly, the law enforcement community has made it clear that it requires the CALEA capabilities to perform its job, especially in these times of ongoing threats to national security. Congress provided that funding for CALEA implementation be available for telecommunications

²²*In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, First Report and Order, 11 FCC Rcd. 18676, 18718 (1996).

²³ *Id.* at 18679.

²⁴*In the Matter of Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, Report and Order, 14 FCC Rcd 4151, 4152 (1999), citing 140 Cong. Rec. H-10779 (daily ed. October 7, 1994) (statement of Rep. Hyde).

equipment, facilities and services deployed on or before January 1, 1995, but only until they undergo “significant upgrades.”²⁵ Small and rural PCS service providers were not even operational before 1995, and many small and rural cellular carriers have become ineligible for reimbursement because of market-mandated switch replacement or implementation of market-mandated upgrades.²⁶ Therefore, federal support for the implementation of the public safety mandates, via the Universal Service Fund, should be available for these essential services.

Because the government views both E911 and CALEA capabilities as essential telecommunications services that should be accessible to everyone at reasonable prices regardless of where they reside, these services should comprise the definition of universal services to be offered by Rural Wireless ETCs, and eligible for federal universal service support.

²⁵47 U.S.C. Sec. 1008(a) and (d).

²⁶47 U.S.C. Sec. 1008(d); *Implementation of Section 109 of the Communications Assistance for Law Enforcement Act: Definitions of “Replaced” and “Significantly Upgraded or Otherwise Undergoes Major Modification,”* RIN 1110-AA00, DOJ/FBI Supplemental Notice of Proposed Rulemaking, 66 Fed. Reg. 50931, rel. Oct. 5, 2001.

CONCLUSION

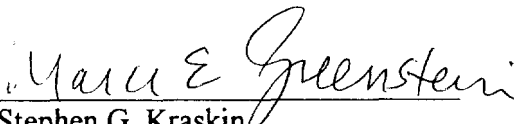
The new environment requires a renewed commitment by Congress and regulatory agencies to ensure that essential services are available on a universal basis, while not sacrificing the traditional American value of competition on a level playing field. By designating E911 and CALEA as the components of a new category of funded universal services offered by rural wireless carriers, the Commission will have elevated substance over form by ensuring the availability, to all citizens of the United States, the benefits of technological advancement.

Accordingly, RCA proposes the establishment and funding of a new a rural wireless ETC category to ensure that the benefits of advanced telecommunications services are universally available to all Americans. The implementation of this proposal will achieve important public policy goals in a prompt and efficient manner.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By:


Stephen G. Kraskin
Sylvia Lesse
Marci E. Greenstein

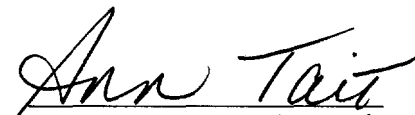
Its Attorneys

2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

November 5, 2001

CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 5th day of November 2001, via hand delivery to the following parties:


Ann Tait

Magalie Roman Salis,
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20024

Sheryl Todd
Accounting Policy Division
Federal Communications Commission
445 12th Street, SW, Room 5-B540
Washington, DC 20024
(three copies)

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20024

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20024

Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20024

Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20024

Qualex International
445 12th Street, SW
Room CY-B402
Washington, DC 20024
(diskette)